

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

J.B. PETERSON)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2004-00025
)	
MARION COUNTY WATER DISTRICT)	
)	
DEFENDANT)	

O R D E R

On January 21, 2004, J.B. Peterson (“Complainant”) filed a formal complaint¹ against the Marion County Water District (“Marion District”) alleging that Marion District violated his civil rights by improperly meeting in executive session and terminating his employment as manager for Marion District. Complainant states as grounds for his complaint that Marion District, in so meeting in executive session, violated KRS 61.800 through 61.850. Complainant requests, pursuant to KRS 61.846, that the actions of Marion District be nullified and that he be reinstated as manager.

KRS 61.800 to KRS 61.850 direct the manner in which meetings of public entities are to be conducted. KRS 61.846 addresses the procedure an aggrieved party must follow to enforce alleged violations of KRS 61.800 through KRS 61.850. KRS 61.846(1) provides that when a party seeks enforcement of KRS 61.800 through KRS 61.850, that party must first submit a written complaint to the presiding officer of the public agency. Here, the

¹ Attached as Appendix A.

public agency is Marion District. If the complaining party disagrees with the public agency's response, the party may then take its complaint, pursuant to KRS 61.846(2), to the Attorney General.

The Commission has no authority to enforce complaints brought under KRS 61.846. The Commission, moreover, is without authority to enforce any provisions of KRS 61.800 through KRS 61.850. The Attorney General, pursuant to KRS 61.846(2), has the power to enforce the provisions of KRS 61.800 through KRS 61.850. The Commission finds that this complaint fails to state a claim upon which relief may be based.

IT IS THEREFORE ORDERED that this complaint is dismissed and is removed from the Commission's docket.

Done at Frankfort, Kentucky, this 2nd day of February, 2004.

By the Commission

ATTEST:


Executive Director

APPENDIX A

**APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2004-00025 DATED FEBRUARY 2, 2004**

RECEIVED

JAN 21 2004

PSC Consumer Services
J.B. PETERSON
1705 MILLER PIKE
LEBANON, KY 40033

COMMONWEALTH OF KENTUCKY
MARION COUNTY WATER BOARD

Pinney
RECEIVED

JAN 21 2004

PUBLIC SERVICE
COMMISSION
COMPLAINANT



V.

OPEN MEETINGS COMPLAINT

MARION COUNTY WATER DISTRICT
1835 Campbellsville Road
P.O. Box 528
Lebanon, KY 40033

Presiding officer: Barbara T. May
6555 Bradfordsville Road
Lebanon, KY 40033

CASE

0004-00025

* * * * *

Comes the Complainant, with counsel, and hereby submits his open meeting act complaint pursuant to KRS 61.846 :

1. That on January 5, 2003 the Marion County Water District met in its ordinary monthly meeting. Attached please find the agenda for that meeting as exhibit 1.

2. During the meeting the board voted to go into executive "closed" session. No specific reason was given other than employee wages were to be discussed. The Complainant and Jimmy Mudd were told to leave and return when they called us back. No one else was present at this time.

3. Upon his return, the Complainant found that his position of employment had been eliminated.

4. Prior to meeting in closed session the reason was not publicly announced nor was the statute giving the authority to do so stated.

5. Further, upon his return, Mr. Peterson heard no motion to

return to public session and found that his position had been eliminated by the District.

6. That during this time he was not even allowed a place to stay upon the premises.

VIOLATIONS OF THE LAW

That in doing so the Marion County Water District committed the following enumerated, but not necessarily only, violations of the Open Meetings Act, KRS 61.800 through KRS 61.850.

1. That the reason given for going into closed session was not specifically stated nor was Mr. Peterson informed. Matters other than those stated were discussed at the closed session. This is in direct violation of KRS 61.815(2)

2. That by not specifically announcing the general reason for the closed session, why that was appropriate, and upon which statutory exception contained in KRS 61.810 that allowed the board to so meet, the board violated KRS 61.815(a).


3. That by stating to Mr. Peterson, when never stating they were back in open session to him, upon his return to the meeting his position had been eliminated the Board had taken a final action. No final action can be taken in closed session pursuant to KRS 61.815(c)

4. That by eliminating his position without notice, either upon the agenda, or by stating it openly prior to closing the session, the District further violated the law. Specifically, that Mr. Peterson never had the opportunity to request a public hearing pursuant to KRS 61.810(f). Further said acts violated Mr.

Peterson's civil rights of due process of law pursuant to Section 2 of the Kentucky Constitution and the 14th Amendment to the United States Constitution.

WHEREFORE, as required by KRS 61.846(1) the Complainant states his proposed remedy to the violation. The only possible remedy to the actions taken would be the nullification of any acts taken in regard to the Complainant on January 5, 2004. The actions beginning to end were deceptively done and in contravention of statute. There is nothing other than the nullification and rescission of said actions that can be done to bring the actions of the board in comport with the law.

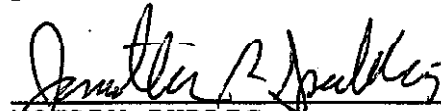
Respectfully submitted,


JONATHAN R. SPALDING
105 W. Main St.
Lebanon, KY 40033
(270) 692-2161
ATTORNEY FOR COMPLAINANT

I, J. B. Peterson, hereby state that the factual statements herein are true to the best of my knowledge and belief.


J. B. PETERSON

Subscribed and sworn to before me, by J. B. Peterson, this the 15 day of January, 2004.


NOTARY PUBLIC

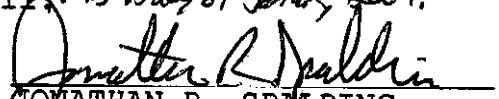
MARION COUNTY WATER DISTRICT
AGENDA FOR COMMISSIONERS MEETING

JANUARY 5, 2004 - 7:00 P.M.

1. Call to Order - Madam Chairman Barbara May
2. Minutes of Last Meeting - Secretary *TR Jeff*
3. Elect Officers for 2004 *TR Don*
4. Adjust Wages for Employees *50 A YEAR FOR 2-YEARS ✓*
5. Simplified Employee Pension - J. B. Peterson
6. Treasurer Compensation *Jeff Don*
7. Report on Loretto Tank & New Water Lines *Donald + Ray*
8. Contract With City of Loretto to Bill Their Sewer Charges
9. Projects for 2004 *Ernest - T Ray*
Electric - Ernest - Donna
10. Any New Business *CHARLIE WHITE do audit JEFF + T-RAY*
11. Adjourn *LT Donnie - T-RAY*

CERTIFICATE

This is to certify that a true copy of the foregoing amended complaint was served upon Barbara May, of 6555 Bradfordsville Road, Lebanon, KY 40033, by certified mail, Chairman of the Marion County Water District, and to the Marion County Water District, P.O. Box 528, Lebanon, KY 40033, by certified mail. *This 15 day of January, 2004.*


JONATHAN R. SPALDING



Reynolds, Inc.

Municipal & Industrial Pipeline Installations • Treatment Plants
INLINER® Trenchless Sewer Rehabilitation • Well Construction

On Jan 5, 03 The Marion
County Water Board **RECEIVED**
They Took These **JAN 2 2004**
Listed in This Comp **PUBLIC SERVICE COMMISSION**

I have been with the
Water District for 39 yrs
as Chairman From 1965-1990
Secretary Treas From 1990-2002
2002 To 2003 I serve as
Manager. Any Further question
you can contact me at my
Home.

JB Peterson
1705 Miller Pike
Lebanon Ky 40033

CASE

2004-00025

Ph 1-270-692-2490

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